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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA; **XIUHTEZCATL TONATIUH M.**, through his Guardian Tamara Roske-Martinez; et al.

Plaintiffs,

v.

The UNITED STATES OF AMERICA; **DONALD TRUMP**, in his official capacity as President of the United States; et al.,

Federal Defendants.

Case No.: 6:15-cv-01517-TC

PLAINTIFFS' RESPONSE IN OPPOSITION TO FEDERAL DEFENDANTS' OBJECTIONS TO ORDER DENYING MOTION TO STAY LITIGATION

INTRODUCTION

In response to Federal Defendants' Objections to the Order Denying Motion to Stay Litigation (ECF 151) ("Stay Objections"), Plaintiffs respectfully request this Court adopt the Magistrate's May 1, 2017 Findings and Recommendation (ECF 146) ("F&Rs"), denying the Federal Defendants' Motion to Stay Litigation (ECF 121) ("Stay Motion"). Magistrate Judge Coffin has an excellent handle on the pre-trial proceedings and committed no mistake. Federal Defendants simply failed to demonstrate that a stay is warranted. All relevant considerations weigh heavily in favor of expeditiously moving this litigation to trial. This Court has, for the third time, rejected the arguments that Federal Defendants proffered in support of dismissal of this case. Federal Defendants have not made a "strong showing" of a likelihood of success on the merits to justify a stay. Furthermore, Federal Defendants have offered no affirmative evidence to show prejudice absent a stay, other than general grievances about the normal rigors of responding to discovery in litigation. The delay that Federal Defendants seek will irreparably injure the Youth Plaintiffs because, as Federal Defendants acknowledge, "CO_2 levels continue to increase with each passing day." Stay Objections, ECF 151 at 7. Finally, the public interest is only served by allowing the Youth Plaintiffs to conduct discovery and present evidence at trial on the merits of their important legal claims. This Court should reject Federal Defendants' latest attempt to shut the courtroom door on the Youth Plaintiffs.

STANDARD OF REVIEW

Under the Magistrate Act, 28 U.S.C. § 636(b)(1), upon a party's objection, "a magistrate's decision on a nondispositive issue will be reviewed by the district judge under the clearly erroneous [or contrary to law] standard." *Bhan v. NME Hospitals, Inc.*, 929 F.2d 1404, 1414 (9th Cir. 1991) (citing *United States v. Raddatz*, 447 U.S. 667, 673 (1980)); *see also* Fed. R.

Civ. P. 72(a). As such, the "deferential 'clearly erroneous or contrary to law standard'" governs this Court's review of the F&Rs. *Shin v. United States*, No. 15-00377 SOM-RLP, 2016 WL 4385837, at * 12 (D. Haw. Apr.15, 2016). Clear error is only present when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). "[A] magistrate judge's decision is contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of procedure." *Morgal v. Maricopa Cnty. Bd. of Sup'rs*, 284 F.R.D. 452, 459 (D. Ariz. 2012).

LEGAL STANDARD

A stay of proceedings is "an exercise of judicial discretion and the propriety of its issue is dependent upon the circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quotations and citations omitted and alterations normalized). A stay is not granted as "a matter of right, even if irreparable injury might otherwise result to the appellant." *Id.* (quotations and citations omitted). A stay, particularly at this phase in the litigation, is "an intrusion into the ordinary processes of administration and judicial review." *Id.* (quotations and citations omitted). The burden of showing that a stay is warranted "lay[s] heavily" on Federal Defendants. *Landis v. N. Amer. Co.*, 299 U.S. 248, 256 (1936).

To stay proceedings, Federal Defendants must satisfy a four-part test: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken*, 556 U.S. at 434. "[I]f there is even a fair possibility that the stay . . . will work damage to some one else, the stay may be inappropriate absent a showing by the moving party of hardship or inequity." *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (citation and internal quotation marks omitted).

ARGUMENT

A. Federal Defendants Have Not Shown They Are Likely To Prevail On The Merits.

A party seeking a stay "must show, at a minimum, that she has a *substantial* case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 967, 968 (9th Cir. 2011) (per curiam) (emphasis added). This requires "a *strong* showing of a likelihood of success on the merits" and "requires more than a *mere possibility* that relief will be granted." *Nken*, 556 U.S. at 420 (emphasis added). Here, Federal Defendants simply restate their unsuccessful arguments raised and rejected twice previously, and fail to demonstrate that they are likely to succeed on the merits. As Plaintiffs demonstrated in detail, each of the questions for which Federal Defendants seek interlocutory appeal fails to meet *any* of the criteria under 28 U.S.C. 1292(b). *See* Plaintiffs' Response to Federal Defendants' Objections Re: Motion to Certify Order for Interlocutory Appeal, ECF 159 ("Pl.'s Obj. Resp."); Plaintiffs' Response in Opposition to Federal Defendants' Motion to Certify Order for Interlocutory Appeal, ECF 133 ("Pl.'s Opp."). As such, Federal Defendants have not made the "strong showing" required of them as to success on the merits.[1]

Federal Defendants cite one out-of-circuit case to support their claim that, because this Court's ruling is "groundbreaking," they are likely to prevail on the merits. Stay Objections, ECF 151 at 4-5 (citing *Mueller v. First Nat'l Bank of Quad Cities*, 797 F. Supp. 656, 663, 64 (C.D. Ill. 1992)). In *Mueller*, the court made no findings as to the likelihood of success on the merits and the case did not even involve a request for a stay pending appeal, rendering this decision largely

[1]Intervenor Defendants previously joined the Stay Motion. *See* Intervenor Defendants' Motion to Certify Order for Interlocutory Appeal, ECF 122 at 2-3. However, Intervenor Defendants offered no objections to Magistrate Judge Coffin's denial of the Stay Motion and the deadline for filing such objections has expired.

irrelevant. If there is anything novel underlying this Court's conclusions as to the questions which Federal and Intervenor Defendants seek to certify, it is the unprecedented *factual* circumstances and developments of the current climate crisis. That this case may involve an application of novel *facts* to well-established principles of law does not, in and of itself, render likely that Federal Defendants will prevail on their Motion to Certify Order for Interlocutory Appeal, ECF 120. "It is well settled that the mere presence of a disputed issue that is a question of first impression, standing alone, is insufficient to demonstrate a substantial ground for differences of opinion," let alone a likelihood of success on the merits. *Couch v. Telescope*, 611 F.3d 629, 634 (9th Cir. 2010).

Federal Defendants reliance on *Umatilla Waterquality Prot. Ass'n, Inc. v. Smith Frozen Foods*, is similarly misplaced. 962 F.Supp. 1312 (D. Or. 1997). In that case, the court certified an order for interlocutory appeal on the *joint* request of the parties. *Id*. at 1314. Here, Plaintiffs vigorously oppose interlocutory appeal and any attendant delay. Moreover, because the *Umatilla Waterquality* parties did not dispute the appropriateness of interlocutory appeal, there was no analysis of the four factors governing a stay of proceedings.

Federal Defendants inaccurately claim that the D.C. Circuit's decision in *Alec L. ex rel. Loorz v. McCarthy* constitutes "conflicting Circuit precedent," thereby establishing a "substantial grounds for difference of opinion on Plaintiffs' public trust claims. 561 F. App'x 7, 8 (D.C. Cir. 2014). Magistrate Judge Coffin amply demonstrated the insufficiency of *Alec L.* to create substantial grounds for a difference of opinion. F&Rs, ECF 146 at 11-14; *see also* Pl.'s Obj. Resp., ECF 159 at 29-30; Pl.'s Opp., ECF 133 at 22-25. Furthermore, a bare allegation that circuits may be in dispute, without any analysis of this Court's resolution of the issue, is insufficient to show that Federal Defendants are likely to prevail on the merits for purposes of a stay. These two cases are hardly "virtually identical." Stay Objections, ECF 151 at 5. While the Youth Plaintiffs alleged a federal public trust claim in this case, their other claims are grounded in the U.S. Constitution and were not asserted, let alone resolved, in *Alec L.* This Court has already adequately distinguished the *Alec L.* decision and Federal Defendants proffer no justification as to why that reasoning is flawed.

Without citation to any authority, Federal Defendants make the perplexing argument that, "[i]f the Ninth Circuit were to accept the interlocutory appeal, it would divest this Court of jurisdiction over this matter." Stay Objections, ECF 151 at 6. This position is entirely irrelevant for purposes of whether this Court should grant Federal Defendant's Motion to Stay Litigation because the Ninth Circuit's willingness to accept the appeal is entirely speculative. Further, Supreme Court and Ninth Circuit precedent clearly establishes that "the filing of a notice of interlocutory appeal" with the appellate court only "divests the district court of jurisdiction over the *particular issues involved in that appeal*." *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper* 254 F.3d 882, 886 (9th Cir. 2001) (emphasis added); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (appeal "divests the district court of its control of those aspects of the case involved in appeal.").

Further, as Plaintiffs demonstrated, even were the Ninth Circuit to accept an interlocutory appeal regarding the Public Trust Doctrine, the right to a stable climate system, *and* the "state created danger" exception claim, Plaintiffs' additional constitutional claims would remain to be tried by this Court. Pl's Obj. Resp., ECF 159 at 14-22. Each of those claims, though presenting different standards, would require overlapping factual development through discovery, argument, and presentation of evidence similar to that required for Plaintiffs' claims under the Public Trust, stable climate system, and "state created danger" exception. *Id.* Consequently, divestment of this

Court's control over the issues presented for interlocutory appeal would have no appreciable impact on the timing and scope of the discovery phase of this litigation. Federal Defendants offer the bare assertion that the issues raised in their Motion to Certify "substantially effect the merits of this case" but offer no explanation as to how certification could possibly divest this Court of jurisdiction over Plaintiffs' remaining claims. Finally, *Ariav v. Mesch, Clark & Rothschild, P.C.*, No. CV 03-464-TUC-MHM, 2005 WL 3008616 (D. Ariz. Nov. 8, 2005), provides no help to Federal Defendants as the court in that case did not analyze the four factors needed to be met for purposes of granting a stay.

B. Federal Defendants Have Not Demonstrated Irreparable Injury Absent A Stay

An applicant for a stay "must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else." *Landis*, 299 U.S. at 255; *Leiva-Perez*, 640 F.3d at 968 (applicant must "show that irreparable injury is the more probable or likely outcome."). A stay of proceedings is "not a matter of right, even if irreparable injury might otherwise result to the appellant." *Nken*, 556 U.S. at 427.

Federal Defendants claim irreparable injury due to the "extraordinary scope of this litigation and the massive scope of discovery." Stay Objections, ECF 151 at 5. Federal Defendants' reliance on *Bituminous Cas. Corp. v. Hartford Cas. Ins. Co.* is misplaced. No. 12-cv-43-WYD-KLM, 2012 WL 5567343 (D. Colo. Nov. 15, 2012). That case addressed the propriety of a motion to stay discovery pending determination of a motion to dismiss, and analyzed the propriety of granting the stay under a distinct, discovery-focused standard specifically applicable to such a motion. *Id.* at *3. While application of that standard would also support a denial of a stay here,[2] the proper standard is focused on the proceedings as a whole, not merely discovery. Further, Federal Defendants present no affirmative evidence of how responding to discovery would harm the operations of the federal government. Thus, their unsupported claim of harm is insufficient to establish irreparable injury for purposes of a stay. *Castaneda v. Molinar*, No. CV 07-07241 DDP (JCx), 2008 WL 9449576, at *4 (C.D. Cal. May 20, 2008) ("The Court acknowledges that discovery can be burdensome. However, such a burden, while regrettable, does not constitute an irreparable injury."); *DKS, Inc. v. Corp. Bus. Solutions, Inc.*, No. 2:15-cv-00132-MCE-DAD, 2015 WL 6951281, at *2 (E.D. Cal. Nov. 10, 2015) ("CBS' conclusory contention that Plaintiff has made 'crippling demands for voluminous discovery' is not enough to make a strong showing of irreparable harm."); *E.E.O.C. v. Recruit U.S.A., Inc.*, 939 F.2d 746 (9th Cir. 1991) (defendant would not be irreparably harmed if forced to participate in discovery pending appeal); *Lam v. City of San Francisco*, No. 10-cv-4641-PJH (N.D. Cal. July 22, 2015) ("The only 'injury' that would result from denial of a stay would be the requirement of plaintiffs' participation in the discovery process . . . ."). Similarly, "[m]any courts . . . have concluded that incurring litigation expenses does not amount to an irreparable harm." *Guifu Li v. A Perfect Franchise, Inc.*, No. 5:10–CV–01189–LHK, 2011 WL 2293221, at *4 (N.D. Cal. 2011); *Sample v. Brookdale Senior Living Cmtys., Inc.*, No. C11-5844 RJB, 2012 WL 195175, at *2 (W.D. Wash. Jan. 23, 2012) (same).

Federal Defendants' unsupported characterizations of never-ending discovery in this case are baseless. First, the discovery process is governed by the Federal Rules of Civil Procedure and

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[2] *Id.* ("(1) the interest of the plaintiff in proceeding expeditiously with discovery and the potential prejudice to the plaintiff of a delay; (2) the burden on the defendants of proceeding with discovery; (3) the convenience to the Court of staying discovery; (4) the interests of nonparties in either staying or proceeding with discovery; and (5) the public interest in either staying or proceeding with discovery.") (citing *String Cheese Incident v. Stylus Shows, Inc.*, No. 1:02-CV-01934-LTB-PA, 2006 WL 894955, at *2 (D. Colo. March 30, 2006)).

"[c]ourts have "broad discretion . . . to permit or deny discovery." *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (internal quotation marks and alterations omitted). As with any case, this Court can, and likely will, be tasked to step in and mediate discovery disputes that the parties are unable to resolve to ensure that discovery is conducted in an appropriate manner.

Second, at this point in the process, Federal Defendants have made no specific objections in writing regarding the scope of Plaintiffs' discovery requests. If Federal Defendants believe they have valid objections to the discovery requests propounded by Plaintiffs to date, they should assert those objections in writing so the parties can meet and confer to resolve the dispute. No such objections are part of the underlying record because no such objections exist.

Third, contrary to Federal Defendants' claims, Plaintiffs have narrowed the scope of their discovery requests. As reflected in the monthly status conferences before Magistrate Judge Coffin, counsel are consistently attempting to work with Defendants and the Court to tailor discovery requests as narrowly as possible and to identify the key documents and factual matters necessary to bring this case to a prompt, thorough, and successful resolution. In fact, Plaintiffs served six significantly narrowed versions of previous requests for document production days prior to the filing of this response. *See* Exhibits 3-8 to Pl.'s Obj. Resp., ECF 159-3 – 159-8. In fact, Federal Defendants have only complicated and prolonged the discovery process. For example, Federal Defendants have now threatened to withdraw and amend their answer, which would serve to broaden the scope of discovery.[3] Federal Defendants' Objections to Findings and Recommendations of Magistrate Judge, ECF 149 at 12 n.5.

[3] This position is curious since Federal Defendants have pointed to no new facts that would justify an amendment of the answer at this stage in the litigation. *Koho v. Forest Laboratories, Inc.*, No. C05-667RSL, 2014 WL 2967604, at *2 (W.D. Wash. July 1, 2014) (denying motion to amend answer in part because "[t]he amendments defendants seek are not based on new facts.").

Finally, as of the date of this filing, Federal Defendants have only agreed to respond to one discovery request: "Federal Defendants agreed to produce documents related to the organizational structure of the State Department." Joint Status Report (May 12, 2017), ECF 157 at 3. Federal Defendants can hardly show that such a minimal production of documents constitutes an irreparable injury.

Federal Defendants reiterate their misperception of the Youth Plaintiffs' claims by stating: "If Plaintiffs had properly brought suit under the Administrative Procedure Act or specific statutes that permit challenges to discrete agency acts or failures to act, judicial review would be limited to a specific action or set of actions and would occur on the administrative record." Stay Objections, ECF 151 at n. 2.[4] As this Court has recognized, "[a]s masters of their complaint, [Plaintiffs] have elected to assert constitutional rather than statutory claims." November 10 Order, ECF 83 at 13. It is neither the prerogative nor right of Federal Defendants to determine Plaintiffs' claims for relief and litigation strategy. Federal Defendants' invocation of the argument that Plaintiffs should simply challenge limited individual federal agency actions is made more scurrilous by the fact that President Trump has now issued Executive Order 13783 which rescinds Federal Defendant Council on Environmental Quality's "Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews." Exec. Order 13783, 82 Fed. Reg. 16,093 (Mar. 28, 2017). Federal Defendants have failed to carry their heavy burden to show that they will be irreparably harmed absent a stay of the proceedings.

A change in administration is entirely irrelevant as to the scientific facts contained in Plaintiffs' First Amended Complaint and admitted by Federal Defendants in their answer.

[4] Plaintiffs have addressed Federal Defendants' erroneous and procedurally improper argument regarding sovereign immunity in prior briefing. *See* Pl.'s Obj. Resp., ECF 159 at 26.

C. Youth Plaintiffs Will Be Substantially Injured If A Stay Is Imposed

Even if this Court finds Federal Defendants have shown there will be some injury absent a stay, it must "'balance the interests of all parties and weigh the damage to each.'" *Guy v. County of Hawaii*, No. 14-00400 SOM/KSC, 2014 WL 4702289, at * 5 (D. Haw. Sept. 19, 2004) (quoting *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1203 (9th Cir. 1980)). For this factor, the Court considers whether "issuance of the stay will substantially injure the other parties interested in the proceeding." *Nken*, 556 U.S. at 434. Notably, Federal Defendants cite no evidentiary support or legal authority to substantiate their claim that "any injuries to Plaintiffs due to a stay should be negligible." Indeed their admissions in the answer indicate otherwise. These admissions alone are grounds to deny the requested stay.

The dangerous climate impacts being felt by Plaintiffs as a result of Federal Defendants' unconstitutional conduct increase in quantity and severity as time marches on.[5] *See, e.g.,* ECF 1-1 (Declaration of Dr. James E. Hansen in Support of Plaintiffs' Claim for Declaratory and Injunctive Relief describing climate science, impacts, impending tipping points, and the urgency of the climate crisis). Federal Defendants themselves acknowledge these perils. Stay Objections, ECF 151 at 9 ("CO_2 levels continue to increase with each passing day"); Federal Defendants' Answer to First Amended Complaint for Declarative and Injunctive Relief, ECF 98 at ¶150

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[5] In fact, Plaintiffs' injuries are becoming more severe in light of the Trump Administration's policies that are designed to encourage the use of fossil fuels and prevent agency regulation of greenhouse gas emissions. *See, e.g., Foster et al. v. Ecology*, No. 14-2-25295-1 SEA (Order Granting Petitioners' Motion for Leave to File Supplemental Brief and Amended Pleadings and Granting RAP 7.2(e) Leave to Seek Permission of Court of Appeals for Formal Entry of this Order) (King County Superior Court, Washington) (Apr. 18, 2017) ("This Court takes judicial notice that federal mechanisms designed to protect the environment are now under siege . . . ."); Exec. Order 13783, 82 Fed. Reg. 16,093 (Mar. 28, 2017) (directing rollback of Clean Power Plan, rescinding moratorium on coal mining on federal lands, and rescinding six Obama Administration executive orders designed to address climate change and regulate greenhouse gas emissions); Exec. Order 13766, 82 Fed. Reg. 8657 (Jan. 24, 2017) (expediting environmental reviews and approvals for infrastructure projects that cause and contribute to climate change).

(Federal Defendants admitting that "'business as usual' CO_2 emissions" imperil Plaintiffs with "dangerous and unacceptable economic, social, and environmental risks. As Defendants have acknowledged, the use of fossil fuels is a major source of these emissions, placing our nation on an increasingly costly, insecure, and environmentally dangerous path.").

Furthermore, the constitutional nature of Plaintiffs' claims confirms that the prolongation and exacerbation of Federal Defendants' violations of Plaintiffs' rights resulting from a stay of proceedings constitutes irreparable injury. "An alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore, Inc. v. Superior Court of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). In the Ninth Circuit, "the balance of equities favor[s] preventing the violation of a party's constitutional rights." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014); *Cobine v. City of Eureka*, No. C 16-02239 JW, 2016 WL 1730084 (N.D. Cal. May 2, 2016).

The irreparable character of environmental injury is well established in precedent binding on this Court. "Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable." *Amoco Prod. Co. v. Vill. Of Gambell*, 480 U.S. 531, 545 (1987) (quotations omitted) *abrogated in part on other grounds by Winter v. Nat. Res. Def. Council*, 555 U.S. 7 (2008). The Ninth Circuit has employed this precise language in approving remedies provided in cases involving environmental injuries. *See, e.g. High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630, 642 (9th Cir. 2004) (quoting *Amoco Prod. Co.*, 480 U.S. at 545). Similarly in *Envtl. Def. v. Army Corps of Eng'rs*, the D.C. district court stated: "Because of the irremediable nature of many environmental claims, courts have been weary of even relatively modest environmental harm." No. 04-1575, 2006 WL 1992626, at *9-10 (D.D.C. Jul. 14, 2006).

The instant case presents a very real threat of spoliation of evidence. *E.E.O.C.*, 939 F.3d at 749-50 ("Plaintiff . . . will suffer immediate and irreversible injury . . . if any of the business records . . . are altered, destroyed, or removed . . . . Such injury would be irreparable."); *DKS, Inc.*, 2014 WL 4702289, at * 2 ("[T]he risk of lost evidence as a result of delaying this action . . . favors denial of the instant Motion"); *S.E.C. v. Bivona*, No. 16-cv-01386-EMC, 2016 WL 2996903, at *2 (N.D. Cal. May 25, 2016); *Shutterfly, Inc. v. Forever Arts, Inc.*, No. CR 12-3671 SI, 2012 WL 2911887, at * 3 (N.D. Cal. July 13, 2012). As counsel for Federal Defendants have made clear, many records relevant to Plaintiffs' claims are subject to passive systems under the protocol of which these records may be automatically lost, destroyed, or deleted after a given period. February 7, 2017 Transcript, ECF 115 at 7:21-25, 8:1-2, 10:3-16. Even after providing Federal Defendants with a litigation hold letter, Federal Defendants have failed to provide this Court or Plaintiffs with the protocols that are in place to ensure that relevant evidence is not destroyed nor provided reasonable assurance to that effect. Olson Declaration in Support of Plaintiffs' Response to Federal Defendants' Motion to Certify Order for Interlocutory Appeal, ECF 135. Plaintiffs are extremely concerned that information, documents, and data related to climate change continue to be removed from websites maintained by Federal Defendants, thereby denying Plaintiffs access to this important information. Joint Status Report as of May 12, 2017, ECF 157 at 6.[6] While Federal Defendants have agreed to provide documents that can no longer be accessed on the Internet, Federal Defendants have not agreed to a timeframe for producing any such documents. *Id.*

[6] For example, Federal Defendant the United States Environmental Protection Agency has removed content and information from its website related to climate change. *See, e.g.*, https://archive.epa.gov/epa/climate-change/climate-change-basic-information.html (displaying "page not found").

Plaintiffs filed their complaint in August 2015. Nearly two years later, the parties are still conducting discovery, largely because of Defendants' unwillingness to produce even the most simple documents requested. *See, e.g.,* ECF 151-2 at 6 (requesting individual documents maintained at the Ronald Reagan Library identified by subject/title, date, collection, box number and file folder); ECF 151-4 at 7 (requesting documents that identify the organizational structure of the White House Council on Environmental Quality). Federal Defendants' estimations of the time needed for discovery and to proceed to trial is without basis, as this Court projected a scheduling of trial for the fall of 2017. *See* Nov. 28, 2016 Transcript, ECF 100 at 12:2-5. To further delay discovery and resolution of Plaintiffs' important legal claims, and to allow Federal Defendants a fourth bite of the apple, would cause Plaintiffs irreparable harm and Federal Defendants have provided no evidence to the contrary.[7]

D. The Public Interest Weighs Heavily In Favor Of Denying A Stay

Federal Defendants have failed to establish that "the public interest does not weigh heavily against a stay." *Lieva-Perez*, 640 F.3d at 967. Courts have denied stay requests based solely on the ground that the public interest justifies denial of a stay. *See, e.g., Cmty. Ass'n for Restoration of the Env't, et al. v. Cow Palace, LLC, et al.*, No. 2:13-cv-03016-TOR, 2015 WL 403178, at * 1 (E.D. Wash. January 28, 2015) ("Here, the Court finds the public interest in addressing current levels of contamination and minimizing any further risk of harm immeasurably outweighs any argument in favor of staying these proceedings pending appeal" and "[a]ny delay in these proceedings only increases the already-present risk to the public health."); *see also Cobine*, No. C 16-02239 JW, 2016 WL 1730084 at * 7 ("The Court recognizes the public interest of protecting the public health and safety as well as preserving the environment…"); *Ctr. for Biological Diversity v. E.P.A.*, 722 F.3d 401, 415 (D.C. Cir. 2013) ("The task of dealing with global warming is urgent and important at the national and international level.") (Kavanaugh, J., concurring).

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[7] Federal Defendants' claim that "Plaintiffs waited until 2015 to file their complaint, after more than sixty years of government actions they now challenge," is ironically absurd. Stay Objections, ECF 151 at 9. The injured Plaintiffs were not even close to being born at that time. Sixty years of systemic government actions and omissions related to energy policy and climate change has put the burden on these Young Plaintiffs, all under 21 years of age, to fight for their fundamental rights to a "climate system capable of sustaining human life."

The public interest is served by allowing Plaintiffs to vindicate constitutional violations. *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013) (quoting *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."); *Vayeghan v. Kelly*, No. cv 17-0702, 2017 WL 396531, at *1 (C.D. Cal. Jan. 29, 2017) ("The Court must consider the public interest in upholding constitutional rights."); *Castaneda*, 2008 WL 9449576, at *4 ("The Court finds that the public interest weighs in favor of denying the stay. This case involves allegations that, if true, reveal serious constitutional violations. Accordingly, the public interest favors allowing the plaintiff to proceed absent a compelling reason to the contrary."). Here, the public interest clearly lies in allowing this case to proceed to trial.

Federal Defendants contend blindly there are only "two important public interests [] at stake here."[8] Stay Objections, ECF 151 at 9. Firstly, "the public's ability to participate in the political process that determines how best to protect the environment while serving other important values such as employment, national security, affordable energy, balance of trade, job creation, international affairs, and energy independence." *Id.* Importantly, Federal Defendants offer no evidence as to how a stay would fulfill this interest. Allowing the case to proceed to trial does not in any way impede the public's ability to participate in the political process. Moreover, Federal Defendants forget that invoking the judicial branch's role in "determin[ing] whether defendants have violated plaintiffs' constitutional rights" is a "question [] squarely within the purview of the judiciary," and thus a critical component of the democratic process. November 10 Order, ECF 83 at 16.[9] When the political branches fail to protect the constitutional rights of citizens, particularly those like Youth Plaintiffs (many of whom are too young to vote), and actively infringe upon those rights, the separation of powers doctrine directs the judiciary to fulfill its duty to serve as a check and balance on the other branches of government to safeguard constitutional liberty. *Marbury v. Madison*, 5 (U.S. 1 Cranch) 137, 163 (1803). Indeed, the public interest has suffered greatly from the Federal Defendants' knowing squandering of the nation's public trust resources without being held constitutionally accountable to young people and future generations.

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[8] Federal Defendants totally ignore several fundamental public interests at issue in this case. For example, (1) ensuring the Executive and Legislative branches fulfill their constitutional duties; (2) maintaining a climate system capable of sustaining human life; or (3) preventing dangerous climate change that will "cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet's ecosystem . . . ." November 10 Order, ECF 83 at 33.

Secondly, Federal Defendants claim "the public interest also weighs heavily in favor of a stay because of the intrusive nature of the discovery sought against the Executive Branch." Stay Objections, ECF 151 at 10.[10] Again Federal Defendants provide absolutely no evidence as to how responding to discovery, done in the normal course of all litigation matters, would harm the public interest. As discussed above, the Federal Rules of Civil Procedure provide standards by which this Court will manage and contain the bounds of discovery in this case. If Federal

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[9] Plaintiffs have repeatedly emphasized that they seek, not for this Court to mandate a specific policy, but only an order directing Federal Defendants to desist from and remedy the violations of Plaintiffs' rights under the Constitution and Public Trust Doctrine. The contents and contours of that plan, and the policies by which to effectuate it, would be left to Federal Defendants.
[10] Plaintiffs have addressed Federal Defendants' alarming and procedurally improper argument regarding sovereign immunity in prior briefing. *See* Pl.'s Obj. Resp., ECF 159 at 26-27.

Defendants truly believed that the discovery served on the President is "especially problematic," they would have served objections in response to those discovery requests. No such objections exist. Federal Defendants have failed to demonstrate that the public interest would be served by a stay in this litigation. In fact, just the opposite is true. The public interest can only be protected by allowing these Youth Plaintiffs to prove their case at trial. *Cobine v. City of Eureka*, No. C 16-02239 JW, 2016 WL 1730084, at *7 ("The Court . . . recognizes the public interest in maintaining the protections afforded by the Constitution to those most in need of protection.").

CONCLUSION

For the second time, Federal Defendants have failed to carry their heavy burden to justify a stay of these proceedings. Each of the four factors weighs strongly in favor of denying a stay and allowing this case to proceed to trial. For the foregoing reasons, Plaintiffs respectfully request this Court adopt the Magistrate's May 1, 2017 Findings and Recommendation (ECF 146) denying Federal Defendants' Motion to Stay Litigation (ECF 121).

DATED this 23rd day of May, 2017, at Eugene, Oregon.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Supporting Memorandum complies with the applicable word-count limitation under LR 7-2(b) because it contains 16 pages and 5,260 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

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